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10 **UNITED STATES DISTRICT COURT**
11 **SOUTHERN DISTRICT OF CALIFORNIA**

12 FEDERAL TRADE COMMISSION,

13 Plaintiff,

14 v.

15 NEOVI, INC., d/b/a NEOVI DATA
CORPORATION and QCHEX.COM, et al.,

16 Defendants.
17

CIVIL NO. 06CV1952 WQH (JMA)

**ORDER REGARDING
CONFIDENTIALITY OF
MATERIALS PRODUCED IN
DISCOVERY OR FOR THE
PURPOSES OF SETTLEMENT**

18 This Stipulated Protective Order between counsel for the plaintiff Federal Trade
19 Commission (“FTC” or “Commission”) and defendants Neovi, Inc., G7 Productivity Systems,
20 Inc., James M. Danforth, and Thomas Villwock (collectively, “Defendants”) concerns the
21 treatment of electronic and hard-copy documents, tangible things, written reports, answers to
22 questions or oral testimony, and information produced by the parties pursuant to a Rule 45
23 Subpoena, during discovery, or for the purposes of settlement in the case entitled *Federal Trade*
24 *Commission v. Neovi, Inc., et al.*, Case No. 06-cv-1952 (S.D. Cal.) (“Material Produced in
25 Discovery or for the Purposes of Settlement”).

26 **IT IS THEREFORE, ON STIPULATION OF THE FTC AND DEFENDANTS,**
27 **ORDERED THAT:**
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- 1 1. The parties shall stamp as “CONFIDENTIAL” any page or any portion of any
2 page of any Material Produced in Discovery or for the Purposes of Settlement that
3 the party believes in good faith contains: (a) trade secrets; (b) proprietary
4 commercial or financial information of a privileged or confidential nature,
5 including, without limitation, tax returns, financial statements, non-public balance
6 sheets and account information; (c) personal financial information and personal
7 identifiers, including but not limited to a person’s social security number, home
8 address, email address, telephone number, bank account or other financial account
9 number (including any Qchex tracking number), and date of birth; (d) information
10 that would reveal a confidential, undercover identity used by the FTC and
11 compromise current and future use of that identity; or (e) any other materials
12 considered confidential under Fed. R. Civ. P. 26(c)(7), Section 6(f) of the Federal
13 Trade Commission Act, 15 U.S.C. § 46(f) or the Court’s ECF Administrative
14 Policies and Procedures § 1(h) (Sept. 5, 2006). Any page or any portion of any
15 page so designated shall be treated as “Confidential Material” for purposes of this
16 Stipulated Protective Order. By designating information as “Confidential
17 Material,” a party is certifying to the Court within the meaning of Federal Rule of
18 Civil Procedure 26(g) that there is a good faith basis both in law and fact for the
19 designation.
- 20 2. All material designated “CONFIDENTIAL” produced by a party in this action
21 shall be disclosed only to the following:
 - 22 a. To the Court and Court personnel during the course of this litigation;
 - 23 b. To professional copying, reproduction, data management, data entry, data
24 processing, or document management companies or contractors of any
25 party;
 - 26 c. To employees of the FTC who are involved in the prosecution of this
27 litigation. Disclosure of Confidential Material to any such person shall be
28 only for the purposes of the case *Federal Trade Commission v. Neovi*,

1 *Inc., et al.*, Case No. 06-CV-1952 (S.D. Cal.) and any related proceedings
2 and for no other purpose whatsoever;

3 d. To the defendants, their officers, directors, and employees, and any of
4 their counsel, including any professionals or paraprofessionals engaged by
5 such counsel, including their associates, office staff, and litigation support
6 assistants who are involved in the defense of this litigation. Disclosure of
7 Confidential Material to any person listed in this subparagraph shall be
8 only for the purposes of the case *Federal Trade Commission v. Neovi,*
9 *Inc., et al.*, Case No. 06cv1952 (S.D. Cal.) and any related proceedings
10 and for no other purpose whatsoever;

11 e. To potential witnesses or consultants who are, or may become, actively
12 involved in this litigation, and their attorneys and staff personnel, provided
13 that before receiving Confidential Material, they, as a condition to being
14 furnished Confidential Material, agree to hold all material as confidential
15 and proprietary. Before receiving any Confidential Material, each person
16 listed in this subparagraph must read this Protective Order and
17 acknowledge in writing, executing the agreement included as Appendix A
18 hereto, that he or she agrees to be bound by the terms of the Order,
19 provided that in lieu of the signed agreement in Appendix A, the FTC's
20 counsel may obtain an executed FTC Form X-033-Nondisclosure
21 Agreement for Contractors from their outside consultants or experts.
22 Disclosure of Confidential Material to any person listed in this
23 subparagraph shall be only for the purposes of the case *Federal Trade*
24 *Commission v. Neovi, Inc., et al.*, Case No. 06cv1952 (S.D. Cal.) and any
25 related proceedings and for no other purpose whatsoever;

26 f. To persons who have had, or whom any counsel for any party in good
27 faith believes to have had, prior access to confidential information, or who
28 have been participants in a communication that is the subject of the

1 confidential information and from whom verification of or other
2 information about that access or participation is sought, solely to the
3 extent of disclosing such information to which they have or may have had
4 access or that is the subject of the communication in which they have or
5 may have participated, except that, unless and until counsel confirms that
6 any such persons have had access or were participants, only as much of
7 the information may be disclosed as may be necessary to confirm the
8 person's access or participation.

- 9 3. Each person or entity to whom Confidential Material is disclosed shall be
10 provided with a copy of this Protective Order.
- 11 4. The Confidential Material will be protected from disclosure at all times and
12 confidentiality will only be lifted pursuant to the procedures outlined in Paragraph
13 11 of this Protective Order.
- 14 5. Nothing in this Protective Order shall impose any restrictions on the use or
15 disclosure by the FTC of Confidential Material as provided by: (1) the FTC's
16 Rules of Practice and any cases construing them; (2) Sections 6(f) and 21 of the
17 Federal Trade Commission Act and any cases so construing them; and (3) any
18 other legal obligation imposed upon the FTC, provided that, in the event the FTC
19 receives a subpoena, discovery demand or other request for Confidential Material
20 produced by defendants in this action, it shall take reasonable steps to protect the
21 confidentiality of the requested material, including providing defendants' counsel
22 with written notice of the subpoena, demand or request at least five (5) business
23 days prior to the date on which the FTC has been commanded or requested to
24 disclose the Confidential Material. If defendants' counsel objects in writing to
25 the disclosure within the five (5) business day period, the FTC shall not disclose
26 the Confidential Material pending a judicial determination of whether the
27 Confidential Material shall be disclosed notwithstanding the provisions of this
28 Order.

- 1 6. Subject to public policy, and further Court order, nothing shall be filed under seal,
2 and the Court shall not be required to take any action, without separate prior order
3 by the Judge before whom the hearing or proceedings will take place, after
4 application by the affected party with appropriate notice to opposing counsel. If
5 the Court grants a party permission to file an item under seal, a duplicate
6 disclosing all nonconfidential information, if any, shall be filed and made part of
7 the public record. The item may be redacted to eliminate Confidential Material
8 from the document. The document shall be titled to show that it corresponds to
9 an item filed under seal, e.g., "Redacted Copy of Sealed Declaration of John
10 Smith in Support of Motion for Summary Judgment." The sealed and redacted
11 documents shall be filed simultaneously.
- 12 7. If any party uses any Confidential Materials during a deposition, it will request
13 the stenographer or court reporter to separately bind and mark as "Confidential -
14 Subject to Protective Order" the portion of the deposition transcript during which
15 the Confidential Discovery Materials are disclosed or discussed. Any such
16 confidential portion of a deposition transcript shall be deemed Confidential
17 Material, subject to the terms of this Protective Order.
- 18 8. Within five business days of the date of this Order, any party who previously
19 produced materials to another party shall designate any such materials as
20 "CONFIDENTIAL" to the extent such information constitutes protected
21 information as defined in this Order.
- 22 9. All transcripts of depositions taken in this action shall be treated as if designated
23 "CONFIDENTIAL" for a period of ten business days after a full and complete
24 copy of the transcript has been available to the deponent or deponent's counsel.
25 Any deponent or counsel for that deponent or counsel for a party may designate
26 during the deposition or during the ten-day period after the transcript is available
27 from the court reporter any portion of the transcript as "CONFIDENTIAL" by
28 denominating by page and line, and by designating any exhibits, that are to be

1 considered "CONFIDENTIAL." Such designation shall be communicated to all
2 parties.

3 10. Any production of information without its being designated as
4 "CONFIDENTIAL" shall not thereby be deemed a waiver of any claim of
5 confidentiality as to such information, and the same may thereafter be designated
6 "CONFIDENTIAL." Upon receiving notice from a party or a third party that
7 confidential information has not been previously denominated, parties shall make
8 reasonable efforts to re-denominate and appropriately treat all such information.
9 Any such subsequent designation, however, shall not apply retroactively to any
10 previously disclosed information for which disclosure was proper when made.

11 11. Any party may at any time request in writing of any other party that any
12 Confidential Material be released from the requirements of this Order. The
13 parties shall confer, and if the parties are unable to reach an agreement on the
14 confidentiality of the material by negotiation, the party seeking protection of the
15 material as confidential must, within ten (10) days of service of the other party's
16 written request to release the material from the requirements of this order, move
17 the Court to issue a protective order retaining the "Confidential" designation of
18 the material at issue. If no such motion is made within ten (10) days of the
19 party's written request, the material at issue will no longer be treated as
20 confidential and protected under this Order. In the event any such motion is
21 made, the moving party must establish that the material at issue is entitled to such
22 confidential protection pursuant to Rule 26(c) of the Federal Rules of Civil
23 Procedure. The terms of this Order shall continue to apply to such material until
24 the Court rules on the motion.

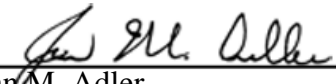
25 12. At the time that any consultant or other person retained to assist counsel in the
26 preparation of these actions concludes participation in the action, such person
27 shall return to counsel all copies of documents or portions thereof designated
28 confidential that are in the possession of such person, together with notes,

1 memoranda, or other papers containing confidential information. At the
2 conclusion of these actions, any subsequent proceedings based thereon, or any
3 related actions, and upon request of any party, the non-governmental parties shall
4 return or destroy all documents obtained in these actions that contain or refer to
5 confidential matters or information, other than trial transcripts and trial exhibits
6 admitted into evidence (and, if destroyed, shall provide a party with an affidavit
7 of destruction); provided, however, that privileged documents or attorney work
8 product need not be returned or destroyed. The FTC shall retain, return, or
9 destroy documents in accordance with the provisions of Rule 4.12 of the FTC's
10 Rules of Practice, 16 C.F.R. § 4.12. The terms of this Stipulated Protective Order
11 shall continue to apply to all documents retained by any party after the conclusion
12 of these actions.

- 13 13. The FTC and Defendants have the right to apply to the Court to modify this
14 Stipulated Protective Order, or for such other relief as they deem advisable.
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16 **IT IS SO ORDERED.**

17 DATED: April 13, 2007

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19 Jan M. Adler
20 U.S. Magistrate Judge
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